

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
In re	:	
	:	Chapter 11
RANDALL'S ISLAND FAMILY	:	Case Nos. 00-41065
GOLF CENTERS, INC.,	:	through 00-41188 (SMB)
	:	(Jointly Administered)
Debtors.	:	
-----X		

MEMORANDUM ENDORSEMENT

The Court declines to sign this order to show cause seeking an immediate hearing to fix the amount of the movant's lien. The sale of the movant's collateral, plus other property, is scheduled for August 14, 2000. The movant seeks to fix the amount of its lien in order to be paid immediately from the sale proceeds. It is not clear that a closing is imminent, but if it is, the movant's lien will attach to the proceeds, providing adequate protection. Furthermore, if the extent or validity of the movant's lien is in dispute, the movant should file an adversary proceeding.

SO ORDERED: 8/10/00

/s/ STUART M. BERNSTEIN
Chief U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11
Case Nos. 00-41065
: through 00-41188
RANDALL'S ISLAND FAMILY GOLF (SMB)
CENTERS, INC., : (Jointly Administered)
:
:

ORDER TO SHOW CAUSE

Deb **MEMO ENDORSED**
-----X

Upon reading and filing the annexed Affidavit of Joseph Aronauer, sworn to on August 9, 2000 and the exhibits annexed thereto; and upon the Affidavit of Henry Bomar, sworn to August 9, 2000, and the exhibits annexed thereto; and upon all of the proceedings had herein, it is

ORDERED, that Debtors, the Unsecured Creditors Committee, the Post-Petition Lender and any other party-in interest show cause before the Hon. Stuart M. Bernstein, at the Courthouse located at Alexander Hamilton Custom House, 1 Bowling Green, New York, New York 10004, on the ____ day of August, 2000, at 10:00 a.m., or as soon thereafter as counsel can be heard, why an order should not be entered:

1. Allowing the secured claim of ORIX USA Corporation, including post-petition interest, costs and expenses, including attorneys fees;
2. Directing that ORIX USA Corporation be paid the amount of its allowed claim at the closing of the sale of the Hiland Golf Center property to Klak Golf L.L.C. or any other purchaser; and

MEMO ENDORSED

3. Granting ORIX USA Corporation such other, further and different relief as to this Court may seem just, proper and equitable; and it is further

ORDERED, that service of this Order to Show Cause and the papers upon which it is based by overnight delivery service on or before the ____ day of August, 2000 upon (i) counsel to Debtors, Fried, Frank, Harris, Shriver & Jacobsen, (ii) counsel to the Unsecured Creditors Committee, Berlack, Israels & Liberman, LLP, (iii) counsel to the Post-Petition Lender, Morgan, Lewis & Bockius, LLP, and (iv) the U.S. Trustee, shall be deemed good and sufficient service; and it is further

ORDERED, that opposition papers, if any, shall be served upon ORIX's counsel, Aronauer, Goldfarb, Sills & Re, LLP, 444 Madison Avenue, 17th Floor, New York, New York 10022, so as to be received on or before the ____ day of August, 2000, by hand or overnight delivery service.

Dated: New York, New York
August ____, 2000

~~Hon. Stuart M. Bernstein
United States Bankruptcy Judge~~

Not signed

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re : Chapter 11
Case Nos. 00-41065
: through 00-41188
RANDALL'S ISLAND FAMILY GOLF (SMB)
CENTERS, INC., : (Jointly Administered)
:
: **AFFIDAVIT IN SUPPORT OF**
: **MOTION BY ORIX USA CORP**
Debtor.
-----x

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

JOSEPH ARONAUER, being duly sworn, deposes and says:

1. I am a member of Aronauer, Goldfarb, Sills & Re LLP attorneys for ORIX USA Corp. ("ORIX") in this proceeding. I submit this affidavit in support of ORIX's motion to have the validity and amount of ORIX's secured claim fixed by the Court and to have ORIX's claim paid at the closing of the sale of the collateral.

The Background of this Motion

2. The motion by ORIX arises in the context of a proposed bulk sale by debtor (the "Debtors") of 35 properties to one bidder (the "Bulk Bidder"). ORIX has a mortgage on one of the 35 properties being sold to the Bulk Bidder free and clear of ORIX's mortgage lien. At the July 31, 2000 hearing before this Court, ORIX and another mortgagee objected to the bulk sale on

the basis, among others, that it would interfere with each mortgagee's right to credit bid under Bankruptcy Code § 363(k).

3. In order to resolve the mortgagees' objections, Debtor, the Official Creditor's Committee, Chase Manhattan Bank (the DIP Lender) and the Bulk Bidder agreed that a portion of the purchase price would be allocated to each of the two mortgaged properties in an amount sufficient to pay off the mortgages. See pp. 69-70 of the transcript of the July 31, 2000 hearing before this Court, a copy of which is annexed hereto as Exhibit A. It was further agreed that mortgagees would be paid the amounts due on their mortgages at the closing of the sale to the Bulk Bidder, provided mortgagees had previously filed a motion and established the validity and amount of their liens. Id. This motion is submitted by ORIX in order to comply with the guidelines set forth at the July 31, 2000 hearing.

ORIX's Mortgage

4. As set forth more fully in the accompanying affidavit of Henry Bomar, sworn to August 9, 2000 (the "Bomar Aff."), ORIX is the owner of a note (the "Note") signed by Debtor Family Golf Centers, Inc. ("Borrower") in the original principal amount of \$3,000,000 (Bomar Aff., ¶ 2). Borrower is one of the Debtors in this bankruptcy proceeding.

5. The Note is secured by a mortgage (the "Mortgage") signed by Borrower. The Mortgage constitutes a first mortgage lien on property owned by Borrower known as Hiland Golf Center (the "Property"). (Bomar Aff., ¶ 9). The Mortgage has been duly recorded (Bomar Aff., ¶ 7) and was a valid lien on the Property years before Borrower's bankruptcy petition was filed.

The Value of the Property

6. The Property consists of, among other things, a golf course and clubhouse. In order to determine whether ORIX's security interest was fully protected, our law firm retained an appraisal firm. This appraisal firm, Wellspeak, Dugas & Kane, LLC ("Wellspeak"), has extensive experience in the valuation of golf properties. Annexed as Exhibit B is the summary of the appraisal (the "Appraisal") by the Wellspeak appraisal firm. The Appraisal establishes that the Property was worth \$3.2 million as of June 16, 2000. See Exhibit B: Appraisal. Annexed as Exhibit C is a copy of the bill for \$9,000 for the Appraisal that our firm received from Wellspeak.

ORIX Is Oversecured

7. ORIX is owed \$2,781,816.65 on the Mortgage, plus per diem interest of \$762.75 from August 1, 2000 . See Bomar

Aff., ¶ 19. Since the Property is worth \$3.2 million, ORIX is oversecured.

**The Amounts Owed to ORIX
Should Be Included as
Part of Its Secured Claim**

8. As set forth in ¶ 18 of the Bomar Aff., Orix is owed post-petition interest of \$762.75 per diem from August 1, 2000. ORIX is also owed the following:

a. Principal	\$2,712,000.00
b. Pre-petition Interest	13,136.25
c. Attorneys' fees	46,061.97
d. Appraisal	9,000.00
e. Travel Expenses	<u>1,618.43</u>
Total	\$2,781,816.65

9. Since ORIX is oversecured, Bankruptcy Code § 506(b) is called into play. Under Bankruptcy Code § 506(b):

a. ORIX is entitled to receive interest on its claim. See In re Lehal Realty Associates, 112 B.R. 588, 589 (Bankr. S.D.N.Y. 1990);

b. Under § 3.23(b) of the Mortgage (Exhibit F) ORIX is entitled to recover the cost of the Appraisal from the Borrower. See In re Dalessio, 74 B.R. 721, 724 (9th Cir. BAP 1987).

c. Under § 3.23(b) of the Mortgage (Exhibit F), ORIX is entitled to recover its attorney's fees. See Matter of

Elmwood Farm, Inc., 19 B.R. 338, 339 (Bankr. S.D.N.Y. 1982).

Annexed collectively as Exhibit D is a copy of our firm's June 7, 2000 and July 7, 2000 bills and our time entries from July 1, 2000 to August 7, 2000 in this matter. These bills and time entries show ORIX is entitled to recover \$46,061.97 in legal fees and related disbursements.

10. In addition to the legal fees already incurred by ORIX, additional legal will accrue in connection with this application and any other matters which may arise in the bankruptcy cases which may affect ORIX's interests. As such, ORIX will update for the Court the amount of legal fees along with proof thereof, at the hearing of this motion.

11. In addition, it is requested that this Court grant Debtor's and Creditor's Committee counsel the right to approve and pay to ORIX at closing any additional legal fees incurred by ORIX between the date of the hearing of this application and the closing of the sale to the Bulk Bidder, in an amount not to exceed \$5,000. Alternatively, ORIX requests that \$7,500 be held in escrow for additional legal fees incurred by ORIX from and after the hearing on this application, to be paid to ORIX upon further application to and approval of this Court.


12. No previous application for the same or similar relief has been made.

13. An order to show cause is being used so that a determination as to the validity and amount of ORIX's lien can be made before the transfer of the Property to the Bulk Bidder.

14. It is requested that this motion proceed with notice to counsel for Debtors, the Official Creditor's Committee, Chase Manhattan Bank, N.A. and the U.S. Trustee.

15. Given the nature of the relief requested herein, ORIX respectfully requests that this Court dispense with and waive the requirement for submission of a memorandum of law contained in Local Rule 9013-1(b).

WHEREFORE, deponent request that the Court grant the relief requested herein.


JOSEPH ARONAUER

Sworn to before me this
9th day of August, 2000.


Notary Public

CAMILLE M. SORRENTINO
NOTARY PUBLIC, State of New York
No. 4746297

Qualified in King County
Commission Expires March 30, 2001

Aug-09-00 04:43pm From-Aronauer, Goldfarb, Sills & Re, LLP

212-7556006

T-776 P.07/11 F-780

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11
Case Nos. 00-41065
: through 00-41188
RANDALL'S ISLAND FAMILY GOLF (SMB)
CENTERS, INC., : (Jointly Administered)
Debtor. : AFFIDAVIT
-----X

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

HENRY BOMAR, III, being duly sworn, deposes and says:

1. I am a portfolio manager for ORIX Real Estate Capital Markets, LLC ("ORECM"), servicer for ORIX USA Corporation ("ORIX"). I make this affidavit upon my own knowledge and upon my review of the books and records of ORIX concerning the Mortgage (as defined below). I submit this affidavit in support of the motion by ORIX to establish the amount due ORECM under the Mortgage.

The Loan Documents

2. On or about May 15, 1995, debtor Family Golf Centers, Inc. ("Borrower") signed a certain document entitled "Purchase Money Note" (the "Note"), pursuant to which Borrower promised to pay to ORIX the principal amount of \$3,000,000, plus interest and other charges in accordance with the terms of the Note.

3. A true and complete copy of the Note is annexed hereto as Exhibit E.

Aug-09-00 04:49pm From-Aronauer, Goldfarb, Sills & Re, LLP

212-7666006

T-776 P.08/11 F-780

4. The Note provides for a variable interest rate, with the interest recalculated on the first of each month. The current interest rate is 10.125% per annum and is due to be recalculated on September 1, 2000.

5. As security for payment of all amounts due under the Note, on or about May 15, 1995, Borrower executed and delivered to ORIX a document entitled "Mortgage and Security Agreement" (the "Mortgage").

6. A true and complete copy of the Mortgage is annexed hereto as Exhibit F.

7. The Mortgage was duly recorded in the office of the Clerk of the County of Warren on May 17, 1995, in Vol. 1045, at page 43, *et seq.*

8. Any applicable recording tax was paid at the time of recording of the Mortgage.

9. Pursuant to the Mortgage, Borrower mortgaged real property located at and known as Hiland Golf Club, City of Queensbury, County of Warren, State of New York, and designated as Section 46, Block 1, Lot 5 and a portion of Lot 4 on the Warren County Tax Map.

10. As further security for payment of all amounts due under the Note, Borrower executed and delivered to ORIX a document entitled "Assignment of Agreements and Security Agreement" (the "Security Agreement"), pursuant to which Borrower pledged to ORIX the Collateral, as defined therein.

Aug-09-00 04:44pm From-Aronauer, Goldfarb, Sills & Re, LLP

212-7556006

T-776 P.09/11 F-780

11. A true and complete copy of the Security Agreement is annexed hereto as Exhibit G.

12. The Security Agreement was duly recorded with the Clerk of the County of Warren.

13. Pursuant to Section 3.01 of the Mortgage, Borrower promised to pay all amounts due under the Note and Mortgage.

14. Pursuant to Section 3.23(b) of the Mortgage, Borrower promised to pay all costs and expenses "including, without limitation, attorneys' fees and disbursements [and] charges for appraisals" incurred by ORIX in connection with maintaining the Mortgage and protecting the Mortgage lien.

15. Pursuant to Section 3.23(b), all such costs and expenses are secured by the Mortgage.

The Amount Due on the Note and Mortgage

16. On the date Borrower filed its bankruptcy petition, May 4, 2000, there was due and owing ORIX on the Note and Mortgage a total of \$2,725,136.20, consisting of \$2,712,000 in principal and \$13,136.25 in interest.

17. In addition to the foregoing amounts, ORIX has incurred costs and expenses post-petition of \$56,680.40, consisting of \$46,061.97 in legal fees and disbursements (through August 7, 2000), \$9,000 for an appraisal, and travel costs and expenses of \$1,618.43. (I made one trip to New York to look at the Property with the appraiser and another representative of

Aug-09-00 04:44pm From-Aronauer, Goldfarb, Sills & Re, LLP

212-7556006

T-776 P.10/11 F-780

ORECM traveled to New York to attend the July 31, 2000 hearing before this Court.)

18. Post-petition interest has been paid from the date of the petition through July 31, 2000. Post-petition interest will continue to accrue on the outstanding principal balance of the Note and Mortgage at the rate of \$762.75 per diem from August 1, 2000.

19. Accordingly, there is a total balance due on the Mortgage of \$2,781,816.25, calculated as follows:

Principal	\$2,712,000.00
Pre-Petition Interest	13,136.25
Costs and Expenses	<u>56,680.40</u>
TOTAL DUE:	<u>\$2,781,816.65</u>

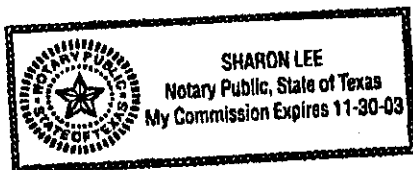
In addition, ORIX is owed interest of \$762.75 per diem from and after August 1, 2000 through the date of payment.

Aug-09-00 04:44pm From-Aronauer, Goldfarb, Sills & Re, LLP

212-7656006

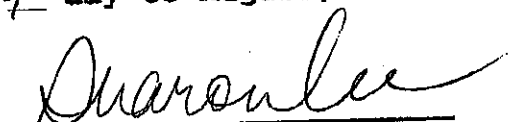
T-776 P.11/11 F-780

WHEREFORE, it is respectfully requested that the Court grant ORIX the relief requested herein and in the accompanying Aronauer Affidavit.




HENRY BOMAR

Sworn to before me this
9 day of August, 2000.


Notary Public